

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

PAUL H. LAMARCHE,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 01-123-B-S
	)	
METROPOLITAN LIFE	)	
INSURANCE CO.,	)	
	)	
Defendant and	)	
Third Party Plaintiff	)	
	)	
v.	)	
	)	
LORNA ARMESTO,	)	
	)	
Third Party	)	
Defendant	)	

**ORDER ON PLAINTIFF’S MOTION TO AMEND**

Plaintiff Paul H. LaMarche has filed a Motion to Amend to add Counts VI, VII, and VIII to his complaint. (Docket No. 20.) I now **GRANT in part** and **DENY in part** the motion.

**Rule 15(a) Standard**

Pursuant to Federal Rules of Civil Procedure 15(a), leave to amend a complaint should be freely given. Foman v. Davis, 371 U.S. 178, 182 (1962) (“ In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely

given.”). However, there are certain instances when amendment need not be allowed, such as a situation where the amendment would be futile. Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 59 (1st Cir. 1990) (“Where an amendment would be futile or would serve no legitimate purpose, the district court should not needlessly prolong matters.”).

### **Discussion**

LaMarche seeks to amend his complaint to add three new counts, negligent infliction of emotional distress, punitive damages, and a violation of Maine’s Late Payment Statute, 24-A M.R.S.A. § 2436. Because I agree with defendant Metropolitan Life Insurance Company that the proposed amendment would be futile as a matter of law as to two of the counts, I will deny the motion to amend as it relates to those allegations. LaMarche initiated this matter by filing a complaint in five counts, seeking a declaratory judgment in Count I and alleging breaches of contract, negligence, and violation of 24-A M.R.S.A. § 2436-A, unfair claims settlement practices, in the remaining four counts. At issue are the proceeds of two annuity contracts entered into by and between Metropolitan Life Insurance Company and Erlinda LaMarche, LaMarche’s deceased wife. LaMarche alleges that in October, 1997 he and his wife met with representatives of Metropolitan for the specific purpose of designating Erlinda LaMarche’s estate as the beneficiary of both of the annuity contracts. (Complaint ¶ 1.) Following Erlinda LaMarche’s death in August, 1998, LaMarche was informed by two agents from Metropolitan that the beneficiary designation on both contracts had mistakenly not been changed. (Id. ¶¶ 18, 19.)

In September, 1999, LaMarche sent a letter to Metropolitan requesting the forms to facilitate distribution of the proceeds to Erlinda LaMarche's estate. (Id. ¶ 20.) After waiting for approximately sixteen months, LaMarche finally heard from Metropolitan in January, 2001, when it wrote to him and informed him that they had never received a formal claim from him and intended to treat his claim as waived unless he responded within two weeks. (Id. ¶ 22.) Following repeated inquiries by LaMarche's counsel, the necessary claims forms were filed in February, 2001, (Id. ¶¶ 24, 25), but Metropolitan continued to refuse to pay the proceeds of the annuities to the estate. (Id. ¶ 29.) LaMarche brought suit against Metropolitan in June, 2001, in this court.

The original beneficiary of both annuity contracts had been Erlinda LaMarche's sister, Lorna Armesto. On August 31, 2000, Armesto filed suit against Metropolitan in the Supreme Court for the State of New York, Queens County, seeking benefits under the annuities. (Countercl. ¶ 13.) Metropolitan informed the parties that it could not distribute the benefits to either one unless the other released rights to the benefits. (Id. ¶ 11.) Neither party was willing to release its rights. (Id. ¶ 12.) Metropolitan, by its answer, counterclaim, and third-party interpleader action sought to join Lorna Armesto as a party to this action and deposit the funds in this court. The parties agreed that Armesto would stay her action in New York and litigate the matter in this court. New scheduling order deadlines were established when LaMarche's original counsel withdrew. In accordance with those new deadlines, successor counsel filed the present motion to amend. Metropolitan has filed a timely objection. (Docket No. 22.)

### ***A. Negligent Infliction of Emotional Distress***

To establish a claim of negligent infliction of emotional distress, the plaintiff must establish that (1) the defendant was negligent; (2) “plaintiff suffered emotional distress that was a reasonably foreseeable result of defendants’ negligent conduct;” and (3) “plaintiff suffered severe emotional distress” as a result of defendant’s negligence.

Veilleux v. Nat’l Broad. Co., 206 F.3d 92, 129 (1<sup>st</sup> Cir. 2000). Further, the plaintiff must prove that the defendant violated a duty of care owed to the plaintiff. Id. at 130; See also Bryan R. v. Watchtower Bible & Tract Soc. of N.Y., Inc., 738 A.2d 839, 848 (Me. 1999), cert. denied, 528 U.S. 1189 (2000). The question of whether a duty exists in these sorts of circumstances is always a matter of law to be determined in the first instance by the court. Cameron v. Pepin, 610 A.2d 279, 282 (Me. 1992). The Maine Law Court in Curtis v. Porter, 784 A.2d 18 (Me. 2001), noted that although people do not have a general duty to avoid negligently causing emotional harm to others, Maine recognizes such a duty in three instances: in bystander liability claims, in cases where a special relationship exists between the parties involved, and when the actor has committed another tort. Curtis, 784 A.2d at 25-26.

The present matter does not fall within the category of a bystander liability claim. Nor is there any underlying tort involving physical injury; the underlying claim is breach of contract. Instead, LaMarche alleges that as the personal representative of Erlinda LaMarche’s estate and as her surviving spouse, a special relationship existed between him and the insurance company. However, under well recognized Maine precedent, an action by a party claiming emotional distress damages for breach of an insurance contract cannot be maintained. See, e.g., Marquis v. Farm Family Mut. Ins. Co., 628 A.2d 644,

652 (Me. 1993); Colford v. Chubb Life Ins. Co. of Am., 687 A.2d 609, 616-17 (Me. 1996)(recognizing that to recover for intentional infliction of emotional distress, a plaintiff must show independently tortious conduct beyond the denial of a claim for the proceeds of a policy). Maine has proceeded cautiously in finding the necessary special relationship to sustain an action for negligent infliction of emotional distress and thus far has only found a duty to avoid negligently causing emotional harm in very narrow categories. See, e.g., Veilleux, 206 F.3d at 131 (citing Bolton v. Caine, 584 A.2d 615, 618 (Me. 1990) (holding that a relationship between physician and patient gives rise to a duty to avoid emotional harm caused by failing to provide patient with critical information); Gammon v. Osteopathic Hosp. of Me., 534 A.2d 1282, 1285 (Me. 1987) (finding that a relationship between a hospital and the family of a decedent gives rise to a duty to avoid emotional harm in handling remains); Rowe v. Bennett, 514 A.2d 802, 806-07 (Me. 1986) (holding that the relationship between a psychotherapist and patient gives rise to a duty of care owed to the patient)). There is nothing in the contractual relationship between LaMarche and Metropolitan that would give rise to a claim for emotional distress damages under any of the alleged facts.

### ***B. Punitive Damages***

Under Maine law a punitive damage award must be based on tortious conduct and may be awarded only if the tortfeasor acted with malice. Haworth v. Feigon, 623 A.2d 150, 159 (Me. 1993). Furthermore, “[p]unitive damages are available if the plaintiff can establish by clear and convincing evidence that the defendant’s conduct was motivated by actual ill will or was so outrageous that malice is implied.” Fine Line, Inc. v. Blake, 677

A.2d 1061, 1065 (Me. 1996). There is no claim for punitive damages under the facts as pled.

***C. Late Payment Statute, 24-A M.R.S.A. § 2436***

This statute is penal in nature and strictly construed. Marquis, 628 A.2d at 651. The pleadings allege that Metropolitan failed to respond to the claim within the time periods mandated under state law. Metropolitan maintains that because it ultimately filed an interpleader action in this court it cannot be liable under the statutory provision. On the present state of the pleadings, it is possible to infer that proof of death was received shortly after August 22, 1998, (Countercl. ¶ 8), a claim was made by LaMarche in September, 1999, (Am. Compl. ¶ 20) or perhaps on February 23, 2001, (Am. Compl. ¶ 25) and Metropolitan had not communicated that it disputed that claim as of the date of the original complaint, June 19, 2001. (Compl. ¶ 27).

It is well established in Maine law that § 2436(1) of the late payment statute requires an insurer to dispute or pay a claim within thirty days after receiving the claim. See, e.g., Chiapetta v. Lumbermens Mut. Ins. Co., 583 A.2d 198, 200 (Me. 1990). If an insurer does neither, the claim is deemed “overdue” and the insurer is subject to penalties under the statute. 24-A M.R.S.A. § 2436(1). One exception allows the insurer to request reasonable additional information from the claimant during the thirty-day period, resulting in the tolling of the thirty-day period. (Id.) After the insurer receives the requested information, the thirty-day clock starts anew and begins ticking. On the present pleadings, I cannot say that the proposed amendment is futile as to Count VIII.

## Conclusion

Based upon the foregoing, I **DENY** the Motion to Amend to add Counts VI and VII, negligent infliction of emotional distress and punitive damages, and **GRANT** the Motion as it relates to Count VIII.

## CERTIFICATE

A. The Clerk shall submit forthwith copies of this Order to counsel in this case.

B. Counsel shall submit any objections to this Order to the clerk in accordance with Fed. R. Civ. P. 72.

***So Ordered.***

Dated May 14, 2002

\_\_\_\_\_  
Margaret J. Kravchuk  
U.S. Magistrate Judge

BANGOR

STNDRD

U.S. District Court  
District of Maine (Bangor)  
CIVIL DOCKET FOR CASE #: 01-CV-123

LAMARCHE v. METROPOLITAN LIFE

Filed:

06/19/01

Assigned to: JUDGE D. BROCK HORNBY

Jury demand: Plaintiff

Demand: \$0,000

Nature of Suit: 110

Lead Docket: None

Jurisdiction: Diversity

Dkt# in other court: None

Cause: 28:1332 Diversity-Insurance Contract

PAUL H LAMARCHE, In his  
capacity as Personal  
Representative of the ESTATE  
OF ERLINDA POLVOROSA LAMARCHE  
and as Trustee of the ERLINDA  
A. POLVOROSA FAMILY TRUST  
plaintiff

THAD B. ZMISTOWSKI, ESQ.  
[term 03/07/02]  
[COR LD NTC]  
EATON, PEABODY, BRADFORD &  
VEAGUE  
P. O. BOX 1210  
BANGOR, ME 04402-1210  
947-0111  
JOHN A. WOODCOCK, JR.  
942-9900  
[COR LD NTC]  
WEATHERBEE, WOODCOCK, BURLOCK &  
WOODCOCK  
P. O. BOX 1127  
BANGOR, ME 04402  
942-9900

v.

METROPOLITAN LIFE INSURANCE  
COMPANY  
defendant

JON HADDOW, ESQ.  
[COR LD NTC]  
FARRELL, ROSENBLATT & RUSSELL  
P.O. BOX 738  
BANGOR, ME 04402-0738  
(207) 990-3314

METROPOLITAN LIFE INSURANCE  
COMPANY  
counter-claimant

JON HADDOW, ESQ.  
[COR LD NTC]  
FARRELL, ROSENBLATT & RUSSELL  
P.O. BOX 738  
BANGOR, ME 04402-0738  
(207) 990-3314

v.

PAUL H LAMARCHE  
counter-defendant

THAD B. ZMISTOWSKI, ESQ.  
[term 03/07/02]  
[COR LD NTC]  
EATON, PEABODY, BRADFORD & VEAGUE  
P. O. BOX 1210  
BANGOR, ME 04402-1210  
947-0111

JOHN A. WOODCOCK, JR.  
942-9900  
WEATHERBEE, WOODCOCK, BURLOCK & WOODCOCK  
P. O. BOX 1127  
BANGOR, ME 04402  
942-9900

METROPOLITAN LIFE INSURANCE  
COMPANY  
third-party plaintiff

JON HADDOW, ESQ.  
[COR LD NTC]  
FARRELL, ROSENBLATT & RUSSELL  
P.O. BOX 738  
BANGOR, ME 04402-0738  
(207) 990-3314

v.

LORNA ARMESTO  
third-party defendant

PHILLIP D. BUCKLEY  
(207) 947-4501  
[COR LD NTC]  
RUDMAN & WINCHELL  
84 HARLOW STREET  
P.O. BOX 1401  
BANGOR, ME 04401

ALBERT S. TABLANTE, JR., ESQ.  
[COR LD NTC]  
ALVY & TABLANTE, LLP  
3000 MARCUS AVENUE  
SUITE 3W2  
LAKE SUCCESS, NY 11042  
(516) 328-7181

LORNA ARMESTO  
cross-claimant

PHILLIP D. BUCKLEY  
(207) 947-4501



[COR LD NTC]  
RUDMAN & WINCHELL  
84 HARLOW STREET  
P.O. BOX 1401  
BANGOR, ME 04401

ALBERT S. TABLANTE, JR., ESQ.  
[COR LD NTC]  
ALVY & TABLANTE, LLP  
3000 MARCUS AVENUE  
SUITE 3W2  
LAKE SUCCESS, NY 11042  
(516) 328-7181

v.

METROPOLITAN LIFE INSURANCE  
COMPANY  
cross-defendant

JON HADDOW, ESQ.  
[COR LD NTC]  
FARRELL, ROSENBLATT & RUSSELL  
P.O. BOX 738  
BANGOR, ME 04402-0738  
(207) 990-3314